

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 399 of 1994
APPEAL FROM ORDER No 400 of 1994
APPEAL FROM ORDER No 401 of 1994
APPEAL FROM ORDER No 402 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

DIST PANCHAYAT

Versus

SPL LAND ACQ. OFFICER

Appearance:

MR PV HATHI for Petitioner
GOVERNMENT PLEADER for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 20/06/2000

ORAL JUDGEMENT

Heard learned counsel appearing for the appellant and the respondent no.1. In all these appeals, the other respondents though served have not appeared. The appeals are preferred from the common judgment and order of the learned Joint District and Assistant Sessions Judge, Jamnagar passed in Civil Review Application Nos.2,3,4 and 5 of 1985. There being a common question of law involved in this appeals, they are disposed by this common judgment.

[2] By the impugned judgment and order, all the Review Applications are allowed and awards in Land

Acquisition Case Nos.34,35, 36 and 37 of 1981 have been modified and corrected, so as to award solatium at the rate of 30% on the market value and interest at the rate of 9% from the date of taking possession and also interest at the rate of 15% till realization. And additional amount of 12% from the date of the notification under Section.4 of the Land Acquisition Act till the date of award is also ordered to be paid. This impugned common judgment and order is based upon the fact that the Land Acquisition (Amendment) Act, 1984 (Act No.86, 1984), by virtue of Sec.30 thereof, enhanced benefits with retrospective effect i.e. from 30th April 1982. The learned trial court has relied upon the judgment of the Hon'ble Supreme Court in Bhag Singh Case (AIR 1985 Supreme Court 1576) for justifying the enhancement of compensation. It has relied upon the judgment reported in AIR 1986 Bombay 308, in support of the submission of the claimants that when the provisions of amendment were neither introduced nor considered at the time of rendering a judgment an error analogous to one apparent on the face of the record had crept in and a case for review was made out. Thus, the claimants were held to be entitled to compensation and interest at the enhanced rates.

[3] The impugned judgment is challenged in the present appeal mainly on the ground that the review applications were entertained after the period of limitation was over and without even a formal application for condonation of delay by the applicants; that review was incompetent and the court had no jurisdiction to review the judgment as it had become final and also on the ground that the retrospective effect of the Amendment Act did not cover the award in question in the facts of the present case.

[4] It is also pointed out on behalf of the appellants that the judgment of the Hon'ble Supreme Court in Bhag Singh's case (Supra) is in terms overruled by a Constitution Bench of the Supreme Court, in Union of India v. Raghubir Singh, (AIR 1989 SC 1933). Therefore, even on merits, the claimants had no right to claim an enhanced compensation under the amended provisions of the Land Acquisition Act.

[5] The relevant facts are that the land of several agriculturists was acquired pursuant to the notification published in March,1979, the award for compensation was made in September,1981 and upon a reference under Section-18 additional compensation was awarded on 30th September 1982. The State Government preferred the

appeal being First Appeal No.1050 of 1983 from the award of the court and the same was summarily dismissed on 06.07.1983 by a Division Bench of this court, as a consequence of which the additional amounts awarded by the court with solatium and interest were also deposited in December,1983. Thus, after the award was confirmed in appeal, the claimants preferred the application for reviewing the award on 26.02.1985 to claim the additional solatium and interest in view of the amendment of the Land Acquisition Act which came into force on 24.09.1984 with a retrospective effect. Thus, in short, the Land Acquisition Officer passed the award in September,1981 and the Reference Court had made the award on 30th September,1982 which was sought to be challenged in a review application filed in February,1985.

[6] Apart from pleading the bar of limitation and the absence of even an application for condonation of delay, the appellant has challenged the jurisdiction and power of the learned District and Sessions Judge to review the judgment under Order-47, Rule-1 and Sec.151 of the Code of Civil Procedure. In a similar set of facts, the Hon'ble Supreme Court has in the case of Bai Shakriben (dead) by Natwar Melsingh and others v. Special Land Acquisition Officer and another (AIR 1996 Supreme Court 3323) observed as under :-

"A Constitution Bench of this Court in Union of India v. Raghubir Singh, (1989) 2 SCC 724 : (AIR 1989 SC 1933) came to consider the effect of sub-section (2) of Section 30 of the transitory provision on which strong reliance was placed by Shri Dave. In paragraphs 33 and 34, the Constitution Bench had held that if the proceedings are pending in appeal, the amendment Act has no application and it would be applicable only to the proceedings if they are pending before the Collector or reference Court between April 30, 1982 to September 24, 1984. It would thus be seen that if the proceedings are pending between these dates, indisputably the appropriate course or LAO is required to apply the provisions as amended under Act 68 of 1984. But having allowed the decree to become final, the question emerges whether it would be open to the executing Court or the reference Court to go behind the decree which become final to amend the self same decree by exercising the power under Order-47 Rule 1 and Section 151 CPC. We feel that the executing Court cannot go behind the decree. It would have been appropriate for the claimants to

have gone in appeal and have the matter corrected, but unfortunately they did claim of the appellate remedy and allowed the decree to become final. The omission to award additional amounts under section 23 (1-A), enhanced interest under section 28 and solatium under Section 23 (2) are not clerical or arithmetical mistake crept in the award passed by the reference court but amounts to non-award. Under those circumstances, the reference Court was clearly in error in entertaining the application for amendment of the decree and is devoid of power and jurisdiction to award the amounts under Sections 23 (2), 23 (1-A) and 28 of the Act.

[7] The ratio of the judgment as above clearly applies to the facts of the present case and, therefore, it is held that the reference Court was clearly devoid of jurisdiction and power to review its earlier award.

[8] In the result, the appeal is allowed and the impugned judgment and order is hereby quashed and set aside with no order as to costs.

Dt.20.06.2000. (D. H. Waghela,J.)
vrpanchal